THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 4051 OF 2007

Dated 20th July, 2007

Between:

M/s. Anglo Indian & Domiciled, European Anglican
Community of Chaderghat of St. George's Church
And Schools, represented by its Chairman,
Sri W.Floate, Chapal Road, Hyderabad.

...
Petitioner

And

Municipal Corporation of Hyderabad,
Represented by its Commissioner having
its office at Tankbund Road, Hyderabad
and others.

...Respondents.

THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 4051 OF 2007

ORDER:

In this writ petition, the petitioner has questioned the order dated 27.1.2007 passed by the Commissioner, Municipal Corporation of Hyderabad rejecting the request of the petitioner for grant of sanction for construction of residential flats in the premises bearing No. 5-9-163 situated at Chapel Road, Abids, Hyderabad.

The petitioner is a society, which was duly registered under the Societies Registration Act, 1351 Fasli. It claims to be the owner of site admeasuring 1001 sq. yards situated at Chapal Road, Hyderabad. It is stated in the affidavit filed in support of the writ petition that originally, the Young Men's Christian Association of Chapal Road, Hyderabad was the owner of the said piece of land and the same was gifted to the petitioner-society by registered Gift Deed dated 24.11.1962 vide document No.3065/62. It is also stated that earlier to the transfer of the said property in favour of the petitioner-society, the donor of the petitioner-society had constructed a building bearing No. 5-9-163 in a portion of the land and with a view to make further construction in the land admeasuring 566 sq. yards, the petitioner firstly submitted the plans for approval of the respondent-Corporation in the year 2004. It is stated that as the respondents insisted for getting No Objection Certificate from the Office of the Collector, Hyderabad District, initially, the petitioner also obtained No Objection Certificate vide endorsement No. N1/B5/9681/2004, dated 3.10.2005 to the effect that the land was not government land. However, subsequently, additional endorsement was issued on 2.11.2005 by the Joint Collector stating that the earlier no objection issued on 3.10.2005 should be taken as only for the purpose of construction of school building for education purpose and

not for any other commercial purposes. As the respondents have not taken any steps on the application filed in the year 2004, it is stated that further application was also filed on 28.1.2006 and based on the endorsements issued by the Office of the Collector and Joint Collector, the earlier application of the petitioner for grant of building permission was rejected by proceedings dated 19.6.2006 on the ground that as per No Objection Certificate issued by the Joint Collector permission can be granted only for the purpose of constructing a school building for educational purposes. Questioning the said orders of rejection, the petitioner earlier approached this Court by filing Writ Petition No.16187 of 2006. In the said writ petition, it was the case of the petitioner that the grant of permissions for construction of buildings is governed by the provisions of the Hyderabad Municipal Corporation Act and the building bye-laws made thereunder. It was his case that though there was no requirement of getting any No Objection Certificate from the Collector, but as the respondents had insisted and due to ignorance of law, the petitioner had to take endorsements from the Office of the Collector. But, in any event, it is not for the said authority to impose any condition for the purpose of granting permission for construction of the building. In Writ Petition No.16187 of 2006, this court by order dated 3.8.2006 recorded a finding that under the provisions of the Hyderabad Municipal Corporation Act or building bye-laws governing the field, no such No Objection Certificate from the revenue authorities is necessary. As such, it was held that rejection of the request of the petitioner for grant of building permission based on the endorsements from the Office of the Collector is illegal. While allowing the writ petition, this court had directed the respondents 1 to 3 therein to process the application of the petitioner dated 28.1.2006 in accordance with the building regulations in force without insisting upon any No Objection Certificate, whatsoever, from the District Collector, Hyderabad and pass suitable orders. After the orders are passed by this court, the petitioner made representations on

14.8.2006 and 28.12.2006. Referring to the earlier order of this court dated 3.8.2006 in Writ Petition No. 16187 of 2006 and the representations of the petitioner dated 14.8.2006 and 28.12.2006, the impugned order is passed again rejecting the proposals of the petitioner for construction of the building on the ground that the purpose of construction is not in conformity with the objects recorded in the Gift Deed, by which, the petitioner claimed title to the property. It is also further stated in the impugned order that bye-laws and Articles of Association of the petitioner-society are not in conformity with the contents of the registered document i.e. Gift Deed. In view of the same, it is stated that there are no authentic grounds to reconsider the proposals for grant of permission.

In this writ petition, it is the case of the petitioner that in spite of specific direction of this court in the earlier writ petition i.e. W.P.No.16187 of 2006 to consider the representation of the petitioner in conformity with the provisions of the Hyderabad Municipal Corporation Act and the building bye-laws made thereunder, the respondents have rejected the proposals on irrelevant grounds. It is stated that it is not for the respondents to enquire as to whether the proposed constructions are in conformity with the recitals of the Gift Deed or not, and, in any event, it is submitted that there are no such restrictive clauses while transferring the property in favour of the petitioner.

Counter affidavit is filed on behalf of the respondents 1 to 3, wherein while generally denying the allegations of the petitioner, it is stated that in response to the representation of the petitioner dated 28.12.2006, the first respondent-Corporation has issued the impugned order refusing to grant permission on the ground that the application of the petitioner for grant of permission for residential flats is not in conformity with the objects of the gift deed and there are no authentic grounds to reconsider the proposals as claimed by the petitioner. Further, it is also stated in general terms that there are numerous complaints from the public in general for misusing the

charitable properties by the vested interests and to avoid any further legal complications, the respondents have passed the impugned order.

The grant of permission for construction of buildings is governed by the provisions of the Hyderabad Municipal Corporation Act. If an application is fled seeking building permission, the respondents have to consider the same in accordance with the provisions of Sections 429 and 431 of the Hyderabad Municipal Corporation Act and the building bye-laws of 1981 by examining the prima facie right and title of the applicant to the property in question. In this case, it is not the case of the respondents that the petitioner has not derived any valid title to the property. When an application is made for grant of permission, the scope of enquiry by the respondents is limited to the extent as to whether the proposed constructions are in conformity with the building bye-laws or not and such application is accompanied by the required documents as contemplated under Sections 429 and 431 of the Hyderabad Municipal Corporation Act. As per the provisions of the Act and the building bye-laws made thereunder, there is no requirement of obtaining any No Objection Certificate from the District Collector. But, however, as the same was insisted while submitting the proposals at the first instance, the petitioner had applied for and obtained the said certificate. Though it is stated in the said endorsements by the Office of the District Collector that the property is not the government property, but, however, it further indicated that the same is issued only for the purpose of constructing building for educational purposes. Based on such certificate, when application of the petitioner was rejected earlier, the petitioner approached this court and this court while allowing Writ Petition No. 16187 of 2006 specifically directed the respondents to consider the application of the petitioner in accordance with the provisions of the Hyderabad Municipal Corporation Act and bye-laws made thereunder without insisting for any No Objection Certificate from the District Collector or

from any other revenue authority. Though the order passed by this court is referred to in the impugned order, but, without examining the proposals in accordance with the directions of this court, the respondents in a routine and mechanical manner, rejected the proposals of the petitioner. When there is a valid conveyance in favour of the petitioner by a registered gift-deed and based on such title, application is made, the respondents ought to have considered the proposals for grant of permission only with reference to the provisions under the Hyderabad Municipal Corporation Act and the bye-laws made thereunder. Whether the proposed construction is for the object of the gift or not is a matter, which is totally beyond the realm of the powers of the authority under the Hyderabad Municipal Corporation Act for grant of permission. Similarly, the reason mentioned in the impugned order that the bye-laws and articles of association of the petitioner-society are not in conformity with the contents of the registered document is not germane for the purpose of grant of permission and in spite of specific direction from this court on earlier occasion, the respondents have casually and mechanically dealt with the proposals of the petitioner and rejected the same by the impugned order on irrelevant and non-existent grounds. While considering the scope of application filed under Section 429 of the Hyderabad Municipal Act this court in **Hyderabad Potteries Private Limited v. Collector, Hyd.**[1] held that the application for permission to construct a building has to be considered with reference to the provisions of Hyderabad Municipal Corporation Act and the bye-laws made thereunder and the Commissioner has to take an independent decision by confining the consideration only with regard to prima facie title and lawful possession of the applicant. As much as the grounds mentioned in the impugned order are not germane for consideration of the application for grant of permission and cannot constitute grounds for rejection of the proposals submitted by the petitioner for construction of building, the impugned order dated 27.1.2007 issued in proceedings Lr.No.59/CSC/TP6/2006/140 is

quashed and the respondents are directed to forthwith consider the proposal of the petitioner afresh by confining the consideration only with regard to compliance of the provisions under the Hyderabad Municipal Corporation Act and the bye-laws made thereunder and communicate the decision within a period of six weeks from the date of receipt of a copy this order, to the petitioner.

The writ petition is allowed with the direction as above. No costs.

20--7—2007 **R.SUBHASH REDDY, J.**

VR

[1] 2001(3) ALD 600